BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

LESSIE HUNTER Claimant	)	
VS.	)	Docket No. 1,044,521
HALLMARK CARDS, INC. Respondent	)	

ORDER

STATEMENT OF THE CASE

The self-insured respondent requested review of the May 21, 2012, Award entered by Administrative Law Judge Brad E. Avery. The Board heard oral argument on September 5, 2012. The Director appointed Joseph Seiwert to serve as Appeals Board Member Pro Tem in place of former Board Member David Shufelt. George H. Pearson, III, of Topeka, Kansas, appeared for claimant. John David Jurcyk, of Kansas City, Kansas, appeared for the self-insured respondent.

The Administrative Law Judge (ALJ) found that claimant suffered a series of personal injuries by accidents that arose out of and in the course of her employment with respondent. The ALJ determined the date of accident to be March 3, 2009, and found that claimant gave timely notice and timely written claim. The ALJ found that claimant had a functional impairment of 32.5 percent for each upper extremity. He also found that the presumption in favor of permanent total disability was not rebutted and therefore found claimant was permanently, totally disabled. He found that respondent was entitled to a credit of $18,452.22 for a previously paid February 12, 2004, settlement award.[1]

The Board has considered the record and adopted the stipulations listed in the Award. The parties agreed that the transcripts of the preliminary hearing testimony should be considered as part of the record, exclusive of exhibits. The ALJ's Award, however, lists only two of the three preliminary hearings. A third preliminary hearing was heard on July 8, 2011, on the issue of claimant's entitlement to continue receiving temporary total

[1] The prior settlement is referred to by the ALJ in the Award and by the attorneys in their briefs and in questions put to Dr. Koprivica but neither the transcript of that settlement nor the medical exhibits for that alleged injury were offered and admitted into evidence in this docketed claim.

disability compensation. Pursuant to the parties' stipulation, the transcript of that third preliminary hearing should be part of the record and was considered by the Board.[2]

ISSUES

Respondent requests review of whether claimant met with personal injury by a series of accidents that arose out of and in the course of her employment; whether the evidence shows that respondent rebutted the presumption that claimant is permanently totally disabled; whether claimant met her burden of proof that her medical treatment was reasonably necessary to cure and relieve the effects of a work-related injury; and whether the ALJ erred in applying a credit against the Award based upon a prior workers compensation settlement rather than the award being reduced by the amount of preexisting functional impairment. Respondent also contends that it overpaid temporary total disability compensation and requests review of the number of weeks claimant was temporarily and totally disabled.

Claimant contends: (1) she suffered a series of repetitive traumas at work that resulted in personal injuries by accidents that arose out of and in the course of her employment; (2) the evidence did not rebut the presumption that she was permanently totally disabled; (3) respondent's argument that her medical treatment was related to her autoimmune disease as opposed to treatment for work-related injuries is without merit as respondent put on no evidence on this issue; and (4) respondent is not entitled to any credit because claimant had bilateral parallel extremity impairments which had nothing to do with the fact that she suffered from rheumatoid arthritis and because any prior recovery had been paid out and there would be no overlapping weeks for respondent to receive a credit against. Claimant also argues that in the event the Board finds that respondent is entitled to a credit due to a preexisting functional impairment, it should be limited to 10.5 percent of each upper extremity as found by the ALJ in the Award of May 21, 2012.

Issues numbered III, IV, V and IX in the ALJ's Award were not raised as issues for the Board to review. Accordingly, the Board affirms the ALJ's findings and conclusions with respect to those issues.

The issues for the Board's review are:

(1) Did claimant meet with personal injury by a series of accidents that arose out of and in the course of her employment with respondent?

---

[2] At the July 8, 2011, preliminary hearing, the ALJ instructed the parties to send a joint letter to Dr. Cooley asking for him to issue a report on the state of the treatment program he has for claimant and to give his opinion on whether claimant's condition had stabilized and if he considered her to be at maximum medical improvement. No such opinion or report by Dr. Cooley appears in the administrative file.

(2) Has respondent rebutted the presumption that claimant is permanently and totally disabled? What is the nature and extent of claimant's disability?

(3) Which party has the burden of proving that claimant's medical treatment was reasonably necessary to cure and relieve the effects of a work-related injury? Has this burden been met?

(4) Is respondent entitled to a credit for preexisting impairment? If so, did the ALJ err in applying a credit against the Award based upon the dollar amount of compensation paid in a prior workers compensation settlement award rather than by reducing the compensation awarded in this claim by the amount of preexisting functional impairment?

(5) Was there an overpayment of temporary total disability compensation?

FINDINGS OF FACT

Claimant began working for respondent on August 27, 1979, shortly after graduating from high school. During 2008, she was working as a high speed W and D machine operator.[3] Claimant would repetitively take paper stock off a skid and load it into the machine, and the machine would glue the paper together, making a card. Each machine could produce about 300 cards per minute. Claimant was constantly moving while feeding the stock into the machine. Claimant testified that sometime in October 2008, claimant was suddenly told she would be operating two machines rather than one. Although the machines were slowed down, her workload increased.

In October 2008, claimant's hands started swelling and she had pain in her shoulders. She could not lift her shoulders or raise her hands without pain. She reported her shoulder and hand conditions to the plant nurse, Kathy Smith. Claimant was told by Mrs. Smith that she thought it was claimant's rotator cuff and offered to get her in to see a doctor. Instead, claimant told Ms. Smith she would see a chiropractor, which she did. Claimant was on light duty for about a week and then returned to her regular duties.

Claimant continued to work until February 10, 2009. Her condition had gradually worsened after October 2008. In February 2009, claimant decided she could not continue working her regular job anymore. Her hands would swell and she could not open them to write or do anything. Claimant went back to the plant nurse and again reported her hand and shoulder conditions, and the nurse told claimant it looked like arthritis and that respondent would not cover that. On the advice of the plant nurse, claimant then went to see her regular physician, Dr. Dan Severa, who ran tests and then referred claimant to a

[3] This was also referred to as a WND and a WD machine at various times in the transcripts of the testimony.

rheumatologist, Dr. Nancy Nowlin. Dr. Nowlin diagnosed claimant with rheumatoid arthritis. Claimant had not been treated for arthritis or arthropathy before October 2008.

Claimant's last day of work was February 10, 2009, when she ended her employment because she could no longer perform the work. She continued to have swelling and pain in her hands and pain in her shoulders. After claimant was diagnosed with rheumatoid arthritis, her attorney sent her to Dr. Edward Prostic, who led claimant to believe she had aggravated her systemic arthropathy by her repetitive work at respondent.[4] After a preliminary hearing, claimant was referred to Dr. David Cooley, a rheumatologist, for treatment. Dr. Cooley told claimant she could not work, and she has not looked for work of any kind after leaving her job with respondent. She said she is unable to work because she cannot perform repetitive work with her hands and is unable to sit more than three hours at a time. She acknowledged that her problems with sitting are a result of rheumatoid arthritis and were not caused by her work at respondent. Claimant is now on Social Security disability. She is 51 years old.

Dr. P. Brent Koprivica is board certified in emergency medicine and in occupational medicine. He evaluated claimant on August 24, 2011, at the request of claimant's attorney. Claimant gave him a history of a prior claimed injury in 2001. Associated with that claim she was having bilateral hand and wrist pain. She was treated by Dr. Fevurly and was eventually referred to Dr. Moore for surgery and underwent thumb carpal metacarpal ligament reconstruction surgery on both her right and left thumbs. According to Dr. Koprivica's report, on June 14, 2002, Dr. Moore rated claimant as having a 10 percent bilateral upper extremity impairment, which he converted to a 12 percent whole person impairment. Claimant then underwent arthrodesis of the right thumb carpal metacarpal joint in September 2002, and the same surgery was done on the left in April 2003. Dr. Moore again assigned a 12 percent whole person impairment on November 4, 2003.

Claimant told Dr. Koprivica she performed constant hand use at work with constant reaching activities. Claimant complained to Dr. Koprivica of pain in her hands and fingers along with loss of strength. She also complained of ongoing shoulder pain. Upon examination, Dr. Koprivica found that claimant had strength deficits on both sides in terms of hand strength, but she self-limited because of pain. She had loss of motion in both shoulders and impingement findings in both shoulders.

After examining claimant, Dr. Koprivica opined that she had a non-work-related autoimmune disorder diagnosed as rheumatoid arthritis. He believed that the manual activity claimant performed with her hands and wrists would "almost certainly" aggravate

[4] P.H. Trans. (April 30, 2009) at 14.

her joints and cause some increase in pain.[5] He also believed the nature of her exposure to risk in her employment was competent to result in cumulative injury. He opined that claimant's ongoing repetitive work as a high-speed press operator resulted in permanent aggravation and intensification of her multiple joint arthralgias involving her hands and fingers. Dr. Koprivica also diagnosed claimant with chronic bilateral shoulder girdle pain with some development of impingement associated with the repetitive nature of her reaching activities. He opined that claimant's rheumatoid arthritis had no role in claimant's shoulder impairment.

Dr. Koprivica believed claimant's prior impairment for the fusion of the thumb joints, as well as the rheumatoid arthritis condition, were greater contributors to her overall impairment of the hands than her aggravation from repetitive hand use. Therefore, he only assigned a mild level of impairment from the contribution of work activities. Using the AMA *Guides,*[6] he rated claimant as having a 5 percent impairment to each upper extremity for her hands for the problems caused by the repetitive work duties. For her shoulders, he rated claimant as having a 13 percent impairment of each upper extremity. The 5 percent and 13 percent impairments combined to a 17 percent impairment to each upper extremity.

Dr. Koprivica said that claimant's current overall impairment is more than 17 percent to each upper extremity, but the 17 percent is what he has assigned for the cumulative injuries suffered since her prior claim was settled in 2004 and separate from her rheumatoid arthritis. Dr. Koprivica believes claimant has a 33 percent impairment to each hand in total, which would include her rheumatoid arthritis, her preexisting condition for which she had surgeries on her thumbs and the aggravation caused by her work-related injuries. This impairment to the hand would convert to 30 percent to each upper extremity. If he added the 30 percent for the hand to the 13 percent to the shoulder, that would come to 43 percent to each upper extremity. Subtracting the 17 percent for her current injuries from the 43 percent total impairment for each upper extremity, equals 26 percent, which Dr. Koprivica said was the percentage of preexisting impairment, either from the rheumatoid arthritis or the preexisting condition for which she had previous surgery.

Dr. Koprivica believed claimant should have permanent restrictions as follows: avoid repetitive hand use, including repetitive pinching, grasping, wrist flexion/extension, and ulnar deviation of her wrist; avoid repetitive pushing or pulling activities at the shoulder level; avoid entirely activities above shoulder level and climbing; limit lifting and carrying to 20-pounds maximum for occasional activities; and no frequent or constant lifting or carrying. Dr. Koprivica said the restrictions are based upon the totality of claimant's physical condition on

---

[5] Koprivica Depo., Ex. 2 at 14.

[6] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

the date he examined her, which would include her prior surgeries, the fusions of her thumbs, and her rheumatoid arthritis.

Bud Langston, a vocational consultant, met with claimant and performed a vocational rehabilitation evaluation of claimant at the request of claimant's attorney. Mr. Langston reviewed the medical report of Dr. Koprivica, including his list of work restrictions. Based upon the restrictions of Dr. Koprivica and Mr. Langston's experience and knowledge of the labor market, and considering claimant's background, education, training and experience, Mr. Langston believed claimant was realistically unemployable and permanently and totally disabled. Mr. Langston used Dr. Koprivica's restrictions. Mr. Langston did not make a determination as to whether the restrictions were related to the workers compensation claim. He agreed that there might be persons doing unskilled jobs in Kansas that do not exceed Dr. Koprivica's restrictions but if there are it would not be many. Regardless, Mr. Langston believed that claimant is precluded from doing even unskilled sedentary work.

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 2008 Supp. 44-510h(a) states:

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[7] Whether an

[7] K.S.A. 2008 Supp. 44-501(a).

accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[8]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[9]

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[10] The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.[11] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[12]

K.S.A. 44-510d(a) states:

> (a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 2/3% of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of

---

[8] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[9] *Id.* at 278.

[10] *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

[11] *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

[12] *Nance v. Harvey County*, 263 Kan. 542, 547-50, 952 P.2d 411 (1997).

permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

. . . .

(11) For the loss of a hand, 150 weeks.

. . . .

(13) For the loss of an arm, excluding the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 210 weeks, and for the loss of an arm, including the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 225 weeks.

. . . .

(23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

K.S.A. 44-510c(a)(2) defines permanent total disability as follows:

Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

K.S.A. 44-510c(b)(2) states:

Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary medical limitations for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, except that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation.

Here, the injury suffered by the claimant was an injury that raised a statutory presumption of permanent total disability under K.S.A. 44-510c(a)(2). The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.[13]

[13] *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

In *Wardlow*[14], the claimant, an ex-truck driver, was physically impaired and lacked transferrable job skills, making him essentially unemployable as he was capable of performing only part-time sedentary work.

The court in *Wardlow* looked at all the circumstances surrounding his condition including the serious and permanent nature of the injuries, the extremely limited physical chores he could perform, his lack of training, his being in constant pain and the necessity of constantly changing body positions as being pertinent to the decision whether the claimant was permanently totally disabled.

The Workers Compensation Act provides that compensation awards should be reduced by the amount of preexisting functional impairment when the injury is an aggravation of a preexisting condition. K.S.A. 2008 Supp. 44-501(c) reads:

> The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

ANALYSIS

Claimant worked for respondent for 30 years. Most, if not all, of that time she spent working on the W and D machine. This work required the constant use of her hands and arms performing repetitive reaching, gripping, grasping and lifting. Dr. Koprivica testified that this work caused claimant's shoulder injuries and aggravated the rheumatoid arthritis condition in her fingers, hands, wrists and arms. There is no contrary opinion. The Board finds claimant met with personal injuries by repetitive work-related traumas. Claimant has met her burden of proving that her bilateral upper extremity conditions arose out of and in the course of her employment with respondent.

Because claimant's injuries are to bilateral extremities, there is a presumption that her injuries have rendered her permanently and totally disabled from engaging in substantial gainful employment. Respondent is unable to accommodate claimant's restrictions. Claimant does not know of any work she is capable of performing in the open labor market. The vocational expert, Mr. Langston, opined that there are no jobs in the open labor market that claimant is competent, qualified and able to perform within Dr. Koprivica's restrictions. Mr. Langston believes that claimant is unemployable. There is no contrary opinion in the record. Respondent has failed to rebut the presumption of permanent total disability. The Board finds that claimant is permanently and totally disabled.

---

[14] *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

Despite having been given notice of claimant's alleged injuries, respondent failed to provide claimant with medical treatment. All of the medical treatment claimant has received has been either obtained on her own or by court order. At the Regular Hearing of February 2, 2012, respondent announced that it had paid $30,104.45 for medical treatment and that there were no outstanding medical bills. Respondent also announced it disputed that the medical treatment incurred was causally related to a work-related accident. Respondent did not specify which medical treatment was disputed and so presumably respondent was disputing all of it. In its brief to the Board, respondent "asks the Board to deny an award of $42,886.45 in medical treatment incurred by the Claimant."[15]

Employers are required to provide injured workers with reasonable and necessary medical treatment for compensable work-related injuries. It is claimant's burden to prove her entitlement to medical treatment. Here, claimant has proven that she sustained work-related injuries. Claimant did not place into evidence any of the bills for the medical treatment she received. Respondent does not dispute the amounts charged for the medical treatment but, rather, contends that not all of the medical treatment expenses were for the work-related injuries. In particular, respondent argues that some of the treatment for claimant's rheumatoid arthritis condition would have been incurred regardless of her having worked or been injured at work. The only expert medical opinion in the record is that of Dr. Koprivica. On the question of causation, he said in part:

> Q. [by Claimant's Attorney] Did the work that she did for Hallmark cause her to have rheumatoid arthritis?
>
> A. [by Dr. Koprivica] No.
>
> Q. What is the relationship between the rheumatoid arthritis and the repetitive work she described for you, if any?
>
> A. My opinion is that there is aggravation that occurs to the arthropathy involving both hands. Arthropathy literally means disease of the joints. And because of the auto immune disease, there's an inflammatory change in the joint that is causing joint injury. But that is aggravated with the repetitive hand use where structurally there are additional injuries that occur to the–to the joint surface itself merely from that repetitive activity that's aggravating it and causing chronic pain–increased chronic pain based on the work activity separate from the underlying rheumatoid arthritis.
>
> Q. The repetitive work aggravates her upper extremities.
>
> A. The hands.
>
> Q. What about the shoulders?
>
> A. The shoulders, I think, is a separate issue. It was a cumulative injury with development of impingement, and that's associated with the actual work activities she's doing with the shoulders. That's separate from rheumatoid arthritis and really is a separate source of pain. I thought that was a cumulative injury in terms of the rotator cuff itself that was causing those findings.
>
> Q. The rheumatoid arthritis had no role in the shoulder impairment?

[15] Respondent's Brief at 12 (filed June 21, 2012).

A. That was my opinion. I don't–I didn't identify any specific rheumatoid involvement of the shoulders.

Q. When you say that the work–repetitive work aggravated the hands, did it aggravate just her symptoms, or did it aggravate her condition to the extent that it brought about permanent impairment of function?

A. I believe that there's further impairment dissociated and distinct from the underlying rheumatoid arthritis in the production of that disease that's because of the repetitive hand use.[16]

Q. [by Respondent's Attorney] In terms of the medication she's taking for rheumatoid arthritis–you believe there's a work-related aggravation component of that, and we've gone through that–in your opinion, does the aggravation cause any increased need for medication?

A. [by Dr. Koprivica] For–not for the specific drug for the rheumatoid arthritis, not in my opinion.

Q. That's something that, in your opinion, she would need whether she'd ever worked at Hallmark or not.

A. That's correct.

Q. In the same dosage.

A. I don't think the dosages change based on this. Now, the Tramadol and Ibuprofen, which are more pain-related treatments, I think there is a relationship, but not the medication for the rheumatoid arthritis specifically.[17]

Based on the record provided, the Board can find that the medical treatment expenses for claimant's shoulders and for her pain were causally related to her work injuries, but otherwise the Board cannot determine which medical expenses are related to claimant's injuries and aggravations and which are not. Other than for the shoulders and the pain medications, claimant has failed to prove what medical treatment is compensable in this claim.[18]

During oral argument to the Board, respondent argued that pursuant to K.S.A. 44-525, it was entitled to a credit against the award of disability compensation for the overpayment of medical treatment expenses. The Board disagrees. Rather, respondent must apply to the

---

[16] Koprivica Depo. at 10-12.

[17] *Id.* at 30-31.

[18] Once again, an inadequacy of the Workers Compensation Act with respect to the Fund's liability is brought into focus. A workers compensation claimant has no incentive to spend his or her time and money to prove the respondent's liability for medical expenses respondent has already paid. The Fund does, but it has no standing to contest a respondent's claim for reimbursement.

Director for reimbursement from the Workers Compensation Fund pursuant to K.S.A. 44-534a(b).[19]

Respondent seeks a credit against the award of permanent total disability compensation pursuant to K.S.A. 2008 Supp. 44-501(c) for the amount of preexisting functional impairment. Dr. Koprivica testified that claimant's total permanent impairment of function is 43 percent to each upper extremity at the level of the shoulder and that 26 percent of that total (at the level of the forearm because the shoulder injuries are new) preexisted the beginning date of her series of accidents in this claim. The Board finds that claimant's preexisting impairments contribute to her permanent total disability and therefore, respondent is entitled to a credit based upon a 26 percent impairment to each upper extremity.

Finally, respondent argues that it overpaid temporary total disability compensation. The Board agrees. Claimant left work due to her injuries on February 10, 2009. Dr. Koprivica testified that claimant's condition reached a plateau and therefore she was at maximum medical improvement on December 16, 2009. There is no contrary testimony. Therefore, claimant has proven she is entitled to temporary total disability compensation for the 44.14 week period of February 11, 2009, through December 16, 2009.

CONCLUSION

(1) Claimant met with personal injuries to her bilateral upper extremities by a series of accidents that arose out of and in the course of her employment with respondent.

(2) The presumption of permanent total disability was not rebutted.

(3) Other than the treatment received for her shoulders and for her pain, claimant failed to prove what medical treatment expenses she incurred were reasonably necessary to cure and relieve the effects of her work related injuries.

(4) Respondent is entitled to a credit against the award of compensation for claimant's permanent total disability equivalent to the 26 percent impairment of function in each upper extremity at the level of the forearm that preexisted her injuries in this claim.

(5) Claimant is entitled to 44.14 weeks of temporary total disability compensation at the rate of $529. Respondent will be credited for its overpayment of temporary total disability compensation in the below Award calculation.

---

[19] See *Roles v. Boeing Co.*, 43 Kan. App. 2d 619, 626, 230 P.3d 771 (2010). (Although the court in *Roles* suggested that the utilization review procedures in K.S.A. 44-510j were not workable, the Division has nevertheless employed such procedures over the course of many years. See *OHS Compcare v. KASB Risk Management Services*, No. 105,416, 270 P.3d 1230, unpublished Court of Appeals decision filed February 24, 2012, [2012 WL 687715]).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated May 21, 2012, is modified as follows:

Claimant is entitled to 44.14 weeks temporary total disability compensation at the rate of $529 per week or $23,350.06, followed by 192.15 weeks of permanent total disability compensation at the rate of $529 per week, minus 104 weeks preexisting impairment at the rate of $529 per week, for a total of 88.15 weeks of permanent total disability compensation at the rate of $529 per week or $46,631.35.

As of November 8, 2012, there would be due and owing to the claimant 44.14 weeks of temporary total disability compensation at the rate of $529 per week in the sum of $23,350.06 plus 88.15 weeks of permanent total disability compensation at the rate of $529 per week in the sum of $46,631.35 for a total due and owing of $69,981.41, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of November, 2012.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: George H. Pearson, III, Attorney for Claimant
georgepearsonlaw@sbcglobal.net
dfloyd.georgepearsonlaw@yahoo.com

John David Jurcyk, Attorney for the Self-Insured Respondent
jjurcyk@mvplaw.com
mvpkc@mvplaw.com

Brad E. Avery, Administrative Law Judge